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MM Docket 95-28
RM-8593
RM-8696

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Mortenson Broadcasting Company of Kentucky, L.L.C. ("MBC"), by its counsel, hereby replies to the "Opposition To Supplement And Statement For The Record" filed by Scott County Broadcasting, Inc. ("Scott County"), on October 18, 1995. MBC has separately filed a motion to accept this reply pleading and a motion to strike Scott County's opposition pleading. By this filing, MBC does not wish to delay action by the Commission in this proceeding nor to raise any new matters. Rather, MBC feels compelled to respond to some serious and unfounded allegations against it by Scott County.

at 4

1. Scott County claims that: (1) MBC failed to file timely reply comments on two occasions thereby failing to restate its continuing interest in the Nicholasville proposal; (2) has lacked candor by not revealing its "larger plan" and, manipulated the Commission's processes to cause delay; and (3) has violated the Commission's Rules by proposing a short-spaced allotment. All of these claims are baseless and reflect a misunderstanding by Scott County.

2. The Commission established the original comment and deadlines of April 24, 1995, and May 10, 1995, respectively in its Notice of Proposed Rule Making ("NPRM") 10 FCC Rcd 2301 (1995). MBC filed a timely counterproposal on April 24, 1995, in which it requested the allotment of Channel 240A to Nicholasville. Scott County filed timely comments on April 21, 1995, restating its interest in the substitution of Channel 241A for Channel 256A at Stamping Ground, Kentucky. No other comments were filed. The reply comment period is designed to provide the original petitioner with an opportunity to respond to comments and counterproposals submitted by other parties. If acceptance of a counterproposal is delayed until after the reply deadline, then the petitioner does not need to reply until a Public Notice is issued announcing its acceptance and setting a new 15 day reply period. See Appendix to the NPRM and Sections 1.415 and 1.420 of the Commission's Rules. As stated in the Appendix, only the original petitioner is required to restate its interest by the comment deadline. There is no parallel

requirement for the proponent of a counterproposal to restate its interest in reply comments.

3. Thus, when the Commission issued the Public Notice on September 13, 1995, announcing the acceptance of MBC's Nicholasville proposal and setting a 15 day reply period, the purpose of the reply was for the petitioner, Scott County, to reply to the merits of MBC's proposal and not for MBC to make a reply presentation.

4. The Commission should not infer any lack of interest on the part of MBC for not restating its interest in the two reply comment periods. MBC knows of no case, rule or policy requiring such a restatement. MBC's only reason for not making such a filing is because it is not common practice to file a reply to one's own pleading. Having already commented on the Stamping Ground proposal, there was no other filing to address in reply.

5. So that Scott County is clear, MBC hereby restates that it has filed the proposal to allot Channel 240A to Nicholasville so that it could file an application to construct and operate an FM station at Nicholasville. As MBC has stated previously, it currently operates a daytime only AM station in Nicholasville and wants to operate a fulltime FM station there as well.

6. There is nothing suspicious or wrong intentioned about this proposal. It is extremely common for an AM licensee to desire to operate an FM station in the same community, especially where the AM station is limited to daytime operations. In fact, the contrary is the rarity where an AM station licensee would not want to operate an FM station in the same community.

7. MBC has no objection to a substitution of channels for WKYI or for it to achieve 6 kW in any other manner. If another channel were available to Stamping Ground for that purpose, MBC would favor such a solution. However, MBC is not aware of another FM channel being available for Nicholasville or for Stamping Ground (or for Nicholasville) to resolve the conflict.

8. MBC has no desire to delay this proceeding and has no "larger plan." MBC simply wants the opportunity to operate an FM station in Nicholasville and at the earliest possible date. There is no ulterior motive.

9. MBC has stated its position in its counterproposal and Supplement with respect to technical compliance of its proposal with the Commission's Rules. MBC has relied upon Section 73.208(a)(1)(i) and numerous cases which allow rule making proposals to be considered and granted (on a conditional basis) based on meeting the spacings to authorizations such as a construction permit to modify a licensed facility. This policy is longstanding and consistent. On the other hand, Scott County

has cited no cases to support its position that a proposal cannot rely on the most recent authorization issued for a licensed station in order to meet the technical standards. Section 73.207, relied upon by Scott County, does not specifically address the situation where more than one authorization exists for a station. Pursuant to Section 73.208(a), MBC's proposal was acceptable when filed.

10. The purpose of the Supplement was to report the new development that on July 27, 1995, Station WRSL-FM, Stanford, Kentucky, filed a license application at its authorized permit site. The license application served to replace the previous licensed facility that was short spaced. Thus, the need for a condition on the grant of Channel 240A at Nicholasville would not be necessary. The Commission chose to delay acceptance until the Stanford license application was filed. But this development did not cure a defect in the original filing. Rather it served to emphasize that there was no violation at the time of filing.

11. MBC has not received any special consideration. Its proposal has been treated in a manner that is consistent with the Commission's treatment of proposals which meet the spacing requirements to an authorization issued to a station subsequent to and for the purpose of replacing a previous authorization. MBC has cited numerous cases in support of this policy in its earlier pleading.

12. To reiterate, MBC desires to apply for, construct and operate an FM station at Nicholasville. It has no other motive and has no desire to hinder WKYI's ability to achieve a 6 kW facility.

13. Accordingly, MBC urges the Commission to allot Channel 240A to Nicholasville, Kentucky.

Respectfully submitted,

**MORTENSON BROADCASTING COMPANY
OF KENTUCKY, L.L.C.**

By:


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Its Counsel

November 3, 1995

CERTIFICATE OF SERVICE

I, Jacqueline Solomon, a secretary in the law firm of Mullin, Rhyne, Emmons and Topel, P.C., do hereby certify that I have this 3rd day of November, 1995, sent by first-class U.S. Mail, postage prepaid, copies of the foregoing "REPLY TO 'OPPOSTION TO SUPPLEMENT AND STATEMENT FOR THE RECORD'" to the following:

- * Mr. John A. Karousos
Chief, Allocations Branch
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W.--5th Floor
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- * Ms. Sharon P. McDonald
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Mr. James P. Gray, President
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Jacqueline Solomon

* HAND DELIVERED